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5 UNITED STATES DISTRICT COURT  
6 DISTRICT OF NEVADA

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8 CHRISTOPHER BRIAN KINDER,

Case No. 3:16-cv-00449-MMD-VPC

9 Petitioner,

ORDER

10 v.

11 ROBERT LeGRAND, *et al.*,

12 Respondents.

13 This habeas matter comes before the Court on petitioner's motion for appointment  
14 of counsel. (ECF No. 5.)

15 Following review of petitioner's response (ECF No. 13) to the Court's show-cause  
16 order as to timeliness (ECF No. 10), the Court is persuaded that the interests of justice  
17 require the appointment of counsel herein. Petitioner has raised factual issues regarding  
18 equitable tolling that potentially may require an evidentiary hearing on tolling and that  
19 otherwise warrant appointment of counsel for full factual development and adequate legal  
20 argument. *Cf.* Rule 8(c) of the Rules Governing Section 2254 Cases (appointment of  
21 counsel is mandatory where an evidentiary hearing is warranted). Petitioner's pauper  
22 application, while demonstrating an ability to pay the \$5.00 filing fee, nonetheless  
23 otherwise establishes petitioner's financial eligibility for appointment of counsel under 18  
24 U.S.C. § 3006A.

25 It therefore is ordered that petitioner's motion for appointment of counsel (ECF No.  
26 5) is granted. The counsel appointed will represent petitioner in all federal proceedings  
27 related to this matter, including any appeals or *certiorari* proceedings, unless allowed to  
28 withdraw.

1           It further is ordered that the Federal Public Defender will be provisionally appointed  
2 as counsel and will have thirty (30) days to undertake direct representation of petitioner  
3 or to indicate to the Court the office's inability to represent petitioner in these proceedings.  
4 If the Federal Public Defender is unable to represent petitioner, the Court then will appoint  
5 alternate counsel. A deadline for the filing of an amended petition and/or seeking other  
6 relief will be set after counsel has entered an appearance. The Court anticipates setting  
7 the deadline for approximately one hundred twenty (120) days from entry of the formal  
8 order of appointment. Any deadline established and/or any extension thereof will not  
9 signify any implied finding of a basis for tolling during the time period established.  
10 Petitioner at all times remains responsible for calculating the running of the federal  
11 limitation period and timely presenting claims. That is, by setting a deadline to amend the  
12 petition and/or by granting any extension thereof, the Court makes no finding or  
13 representation that the petition, any amendments thereto, and/or any claims contained  
14 therein are not subject to dismissal as untimely. See *Sossa v. Diaz*, 729 F.3d 1225, 1235  
15 (9th Cir. 2013). The Court's action herein further is without prejudice to any applicable  
16 defenses, including untimeliness, that may be raised by the respondents following the  
17 filing of a counseled petition.

18           It is further ordered, so that the respondents may be electronically served with any  
19 papers filed through counsel, that the Clerk will add state attorney general Adam P. Laxalt  
20 as counsel for respondents and will make informal electronic service of this order upon  
21 respondents by directing a notice of electronic filing to him. Respondents' counsel will  
22 enter a notice of appearance within twenty-one (21) days of entry of this order, but no  
23 further response will be required from respondents until further order of the Court.

24           The Clerk accordingly will send a copy of this order to the *pro se* petitioner, the  
25 Nevada Attorney General, the Federal Public Defender, and the CJA Coordinator for this  
26 division.

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1           The Clerk further will provide copies of all prior filings herein to both the Attorney  
2 General and the Federal Public Defender in a manner consistent with the Clerk's current  
3 practice, such as regeneration of notices of electronic filing

4           DATED THIS 26<sup>th</sup> day of September 2017.

A handwritten signature in blue ink, appearing to read 'Miranda M. Du', is written over a horizontal line.

MIRANDA M. DU  
UNITED STATES DISTRICT JUDGE